

Michigan and the U.S. Nuclear Regulatory Commission
Agreement State Program

Report and Recommendations
July 13, 2007

Summary:

As directed by Governor Jennifer M. Granholm in an October 5, 2006, letter to the U.S. Nuclear Regulatory Commission (NRC), the Michigan Department of Community Health (MDCH) and Michigan Department of Environmental Quality (MDEQ) have developed a strategy for pursuing and enacting an Agreement with the NRC. Under such an Agreement, the state would assume regulatory authority from the NRC over most radioactive materials used in medicine, industry, and research.

An Agreement State Program offers significant benefits to the state of Michigan:

- The safety of Michigan's citizens will be significantly enhanced through the development of a more comprehensive radiation protection program, in which the state will be much more capable of rapidly addressing a broad range of radiological issues, incidents, and threats.
- Consolidation of regulatory authority at the state level will offer Michigan's radioactive materials licensees a more responsive and accessible regulatory staff. Annual fees paid by most licensees will be significantly reduced.
- Fees paid by licensees will remain in the state, rather than going into federal coffers.

After consultation with NRC licensees and other stakeholders, the MDCH and MDEQ are recommending that the state proceed with this strategy. Following the formal notice of intent from the Governor to the NRC to proceed as an NRC Agreement State Program and the passage of an interim fee bill, the two departments can begin the process of integrating within the MDCH the x-ray program currently in the MDCH and the radioactive materials program currently in the MDEQ. The MDCH and MDEQ will forward a draft Executive Order enabling this integration, after passage of the interim fee in the spring of 2008.

Background:

Congress established the Agreement State Program in 1959. Under the provisions of Section 274b of the federal Atomic Energy Act (AEA), the NRC and a state can enter into an Agreement that authorizes the state to assume regulatory authority over certain categories of radioactive materials, defined in the AEA as byproduct material, source material, and special nuclear material.

Michigan is one of a small and diminishing number of states that have not enacted an Agreement. There are currently 34 Agreement States, with three more in the formal process of enacting an Agreement. Michigan, with 560 NRC licensees, will soon be the largest non-Agreement State in terms of the number of licensees. Annual fees charged by the NRC to its licensees, already high, will continue to escalate as additional states sign Agreements.

The MDEQ, Waste and Hazardous Materials Division, Radiological Protection Section, initiated an effort in 2004 to evaluate the prospect for Michigan to become an Agreement State. A stakeholder advisory committee met several times in 2005 to consider the advantages of

becoming an Agreement State. Based on the deliberations of that advisory committee, the MDEQ prepared a briefing paper that recommended (1) consolidation of the two department's radiation protection programs into the MDCH and (2) the state become an Agreement State. The Directors of both departments endorsed these recommendations.

The federal Energy Policy Act of 2005 (EPAct) added some urgency to the consideration. Provisions within the EPAct affect the regulatory authorities of the states and the NRC regarding a class of radioactive materials (naturally occurring or accelerator-produced radioactive material – NARM) traditionally regulated by the states. In effect, Michigan will lose regulatory authority over NARM unless it becomes an Agreement State.

The Chairman of the NRC wrote to the Governors of all non-Agreement States in August 2006 to determine if those states were likely to pursue Agreements. In her response letter of October 5, 2006, Governor Granholm acknowledged some real benefits to becoming an Agreement State. She further directed the staffs of the MDCH and MDEQ to develop a strategy to merge the two radiation protection programs and to pursue an Agreement, and to consult with licensees and other stakeholders on the strategy.

Becoming an Agreement State assures that Michigan will retain regulatory authority for NARM and assume regulatory authority for the radioactive materials now under NRC control.

The Strategy for Implementing an NRC Agreement:

Before the NRC will sign an Agreement with a state, the state must have a comprehensive radiological protection program in place. The state program must be able to assume full regulatory responsibility from the NRC without diminution of oversight capabilities and service to the licensees. State Radioactive Materials Program staff would be responsible for all phases of the regulatory program: licensing, inspections, enforcement, decommissioning, and incident response.

The proposed strategy follows the successful experience of other states that have recently become Agreement States; most notably, this strategy is modeled after the efforts of the state of Wisconsin, which became an Agreement State in 2003.

Time Line –

An aggressive time line would be followed, with the goal of signing an Agreement by September 2011. Key milestones for 2007 include a "Letter of Intent" (a formal commitment to seek an Agreement) from Governor Granholm, followed by introduction of needed legislation.

Staffing –

Currently, the MDEQ's Radioactive Materials Program consists of 3.5 full-time equivalent (FTE) positions. Based on recommendations of the Conference of Radiation Control Program Directors, Inc., and the experience of other state programs, an additional ten FTE positions (eight technical, two clerical) should be established and filled over the next four years.

Program Start-Up Financing –

The NRC provides no funding for a state to develop the comprehensive program needed to become an Agreement State. Following the lead of other states that have recently become Agreement States, the strategy includes a four-year interim fee on NRC licensees and NARM users to provide the necessary program development funds. The interim fee for most NRC licensees would be equivalent to 40 percent of the annual fee paid to the NRC (annual NRC

fees for Michigan licensees range from \$500 for small entities to \$38,800 for a broad-scope decontamination services company). We recommend establishing a maximum annual interim fee of \$8,000. This “cap” will affect the amount paid by only seven broad-scope licensees.

Program Financing –

Agreement State Programs are often less costly than that of the NRC, resulting in reduced annual fees on licensees. Based on proposed staffing levels, we estimate that Michigan’s fees on licensees will be about 35 percent below comparable NRC fees when Michigan becomes an Agreement State. Given the reduced fees under an Agreement, most licensees would recoup the cost of interim fees in less than four years.

Training –

We intend to hire health physicists for the technical positions. Training of new and existing staff must be done quickly, but fully. Mechanisms for providing training will include shadowing NRC staff, attending the same NRC training courses attended by NRC inspectors, visiting other Agreement States, and working with licensees to take advantage of in-state training opportunities.

Consultation with Licensees and other Stakeholders:

Initial Stakeholder Meeting:

On March 2, 2007, an initial meeting with key NRC licensees and other stakeholders was held in Lansing. The attendees included representatives from seven major hospital and health care licensees, three major universities, and two research companies. Also attending were representatives from four business and industry associations that represent radioactive materials licensees. A total of 25 stakeholders attended.

The strategy for consolidating the radiation protection programs and for developing an Agreement State Program was presented. In addition, a representative from the NRC’s Region III office in Chicago responded to questions about the NRC’s approach to its Agreement State Program. She indicated that NRC fees will very likely increase as other states sign Agreements. Attendees raised a number of questions and issues.

At the conclusion of the meeting, attendees were asked to indicate whether they supported the strategy. About 40 percent of the attendees supported moving ahead, while the remainder indicated that they still had questions and were uncertain. No one indicated opposition to the strategy. Attendees were also asked to indicate their willingness to serve on an Agreement State Advisory Committee (Advisory Committee) to assist the MDCH and MDEQ in efforts to move ahead with the strategy. A large majority of those in attendance indicated an interest in participating in such a group.

Follow-Up Advisory Committee Meetings and Additional Outreach Efforts:

On March 16, 2007, a follow-up meeting was held for those that indicated an interest in serving on the Advisory Committee. Mr. Paul Schmidt, Director of the Radiation Protection Program for the state of Wisconsin and current president of the Organization of Agreement States, was present to provide perspective on many of the key issues and questions that had been raised by stakeholders at the earlier meeting.

The 12 attendees at this meeting included the following representatives from key broad-scope licensees within Michigan and key industry associations:

Henry Ford Hospital
William Beaumont Hospital
Spectrum Healthcare
CMS Energy
University of Michigan
Michigan State University
Wayne State University
Michigan Health & Hospital Association
American Conference of Engineering Companies

This meeting concluded with representatives indicating strong interest in continuing to work together to identify and resolve issues relative to the establishment of an NRC Agreement State Program.

Two additional meetings of this Advisory Committee have been held. The recent focus of the Advisory Committee has been the review of proposed amendments to Part 135, Radiation Control, of the Public Health Code, 1978 PA 368, as amended. In addition to meeting with the Advisory Committee, staff has sent an informational letter to all licensees and registrants, has established a Web site to keep stakeholders informed of project status, and has established an e-mail list of interested individuals for regular updates.

We believe that most of Michigan's radioactive materials users – hospitals, universities, research institutions, business, and industry – will support this initiative. To date, no one has indicated outright opposition to it. While a few members of the Advisory Committee continue to have concerns, many members have expressed significant support for this initiative as long as special assurances are made as noted below:

1. The Advisory Committee, consisting of current licensees and industry associations, is able to provide advisory oversight throughout the project.
2. Once becoming an Agreement State, a standing Advisory Council is established to provide policy guidance, a link to the Certificate of Need New Technology Committee, and to provide assistance with disputes.

In addition, since licensees will be funding the development of a more comprehensive radiation protection program with no direct services being provided to them until Michigan signs the Agreement, licensees want assurances that the program development strategy will be implemented as planned and that an Agreement with the NRC can be signed within the allotted time frame. To assure licensees that Michigan will develop a fully trained and competent radioactive materials staff in this time frame, certain preconditions are needed:

- Revenue from the interim fee system must be restricted to the development of an Agreement State Program; funds must be carried over from year to year, rather than reverting to General Funds; and the interim fee is in place for no more than four years.
- New staff (particularly health physics staff positions) needs to be hired in an orderly manner and with sufficient time to provide comprehensive formal training and on-the-job experience. Establishment of new positions and approval to fill those positions must not be delayed by FTE caps or general hiring freezes.

- Some of the formal training required by the NRC of Agreement State staff is only available out of state. Out-of-state travel requests and requests for training must receive prompt approvals, even if restrictions are being applied to other areas of state government.

Recommendation:

The MDCH and MDEQ recommend that the State of Michigan pursue the development of an Agreement with the NRC and that the radiation protection programs be consolidated within the MDCH.

Time Line and Key Milestones:

July 2007	Governor Granholm signs a “Letter of Intent;” signifying Michigan’s interest in becoming an Agreement State and allowing the NRC to begin assisting the state in that effort
September 2007	Introduce interim fee legislation and amendments to Part 135
November 2007	Enact interim fee legislation
January 2008	Begin revision of the <i>Ionizing Radiation Rules</i> promulgated pursuant to Part 135
April 2008	Consolidate programs within the MDCH; hire two technical staff and begin training
June 2008 – June 2010	Hire six technical staff and begin training
September 2010	Submit draft request for an Agreement; the NRC requires about a year to review and approve a draft Agreement
September 2011	Governor signs Agreement